

December 21, 2020

Mr. John Canoles
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, Maryland 21057

Re: Gore Property
2897 Breezy Point Ct., Essex, Maryland 21221
Critical Area Administrative Variance
Tracking No. 07-20-3323

Dear Mr. Canoles:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the Critical Area variance request for the above referenced property. The subject 1.9 acre lot is a residential property that was previously developed, and includes a dwelling, pool, lawn and outbuildings. It is located on the Chesapeake Bay at Breezy Point, in the Essex section of Baltimore County, and is within a Resource Conservation Area of the Chesapeake Bay Critical Area. When the current owners purchased the subject property, it contained a pool surrounded by a deck, partially located within the Critical Area buffer, between the dwelling and the water. It was constructed over a maintained lawn area. The pool and deck were constructed by the previous owners without an approved Critical Area Variance. The current owners have not included this in their development plan for the property and are having it removed and returned to lawn.

The project involves the redevelopment of the property, including replacement of the dwelling and other residential features. A portion of the existing driveway will remain. The variance request proposes to impact the Critical Area buffer for the purposes of constructing a deck and stairs (436 square feet) attached to the dwelling over existing impacts, and for the continued existing uses of a portion of the buffer as mowed lawn, a gazebo, and waterfront access features (stairs, retaining walls) on the southern portion of the property. Water access extends through the boulder and rip-rap steep slope to the shoreline, two piers and a small beach. The variance also requests to impact the 35-foot setback to the buffer in order to accommodate the replacement dwelling (2,368 square feet), currently occupied by portions of existing structures and maintained lawn.

The property is bisected by Breezy Point Court. The waterfront portion of the property south of the road widens from the narrower portion of the site and extends to the Chesapeake Bay. A secondary waterfront area of the property is located north of

the road and narrows to a "panhandle" extending to Brown's Creek. A non-tidal wetland and forest extend from open tidal water on this portion of the property, comprising approximately 22,000 square feet (0.5 acre). The applicant proposes recordation of two Critical Area Easements over portions of both shorelines and all forest on the property.

The Director of EPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.12.04. There are seven (7) criteria listed in COMAR 27.01.12.04 that shall be used to evaluate the variance request. All seven of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The applicant proposes a replacement home, which is to be located outside of the buffer, however, is proposed to encroach into the 35-foot setback to the buffer, over existing, residential uses. In addition, a deck is proposed within the buffer off of the water side of the new dwelling, which is the current location of existing uses, including a portion of a deck. The proposed dwelling/attached garage has been located to allow practical side yard setbacks but is constrained by the property width decreasing in the landward direction. Continued existing use of yard area, and area of the deck waterward and west and east of the dwelling are proposed. Existing waterfront access, and its continued use on the southern portion of the property is desired. The required Critical Area buffer covers greater than half of the area of the property in the area where the site widens from the narrower portion of the property. Not allowing the continued existing use areas, including waterfront access on the southern portion of the property, would be an unwarranted hardship as literal enforcement of the regulations would not allow the continued existing uses. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. Residential uses similar to the replacement dwelling and continued existing uses proposed in this application are enjoyed by owners of other properties in the Critical Area with similar uses and similar site constraints. Literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed on similar properties with similar historical uses. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Impacts to the Critical Area buffer and 35 foot setback, associated with a replacement dwelling, and for continued existing residential uses on the referenced property would not be denied to similar properties in the Critical Area. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant. No construction, or any other actions by the applicant, has begun on the property, therefore, this fourth criterion has been met.

The fifth criterion requires that the variance request does not arise from any conforming or nonconforming condition on any neighboring property. This variance request is not the result of existing or proposed uses on the neighboring properties. Therefore, the fifth criterion is met.

The sixth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. Granting of this variance request will not adversely affect water quality, nor will it adversely impact fish, wildlife, or plant habitat. Water quality will be improved, resulting from the removal of approximately 1,300 square feet of existing buffer impacts. Following this removal, and addition of a deck, there will be a net decrease of 849 square feet of impacts to the buffer, as most of these removed areas will be returned to lawn, and be contiguous with the existing lawn, part of which is the continued existing use requested. Based on this, the sixth criterion can be met with mitigation.

The seventh criterion requires that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. Buffer impacts are limited to the construction of a deck, associated with a replacement dwelling, continued use of the yard, gazebo, shoreline access features, and for the continued use of the 35-foot buffer setback for the replacement dwelling, which is currently occupied by a deck, yard, and other residential features. According to the plans with this variance and field verification of existing conditions, buffer impacts will decrease by 849 square feet, and overall lot coverage on the property will decrease by 472 square feet. In addition, the applicant proposes recordation of two Critical Area Easements, in perpetuity, over portions of both shorelines and all forest on the property. Based on this, granting of this variance will be in harmony with the spirit and intent of the Critical Area regulations, and the seventh criterion is met.

Based upon our review, this Department finds that the first six of the above criteria have been met, and that the seventh criterion can be met with mitigation. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project: "A variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection, to allow for the continued existing uses of a yard, gazebo, and water access features, including retaining walls and two sets of stairs to two piers. In addition, this variance allows for a deck and

stairs (436 square feet) to be constructed within the buffer, and for 2,386 square feet of impacts to the 35-foot setback to the buffer on order to construct the dwelling. Conditions, including recordation of two Critical Area Easements, were placed on this variance to reduce water quality impacts."

2. The waterfront access paths and retaining wall(s) must remain in the existing locations. Path locations must be outlined on the buffer management plan for the project. The paths and retaining walls must remain as shown on the approved buffer management plan.
3. A Critical Area Buffer Management Plan outlining the required mitigation and all Critical Area requirements must be submitted to EPS for review. The enclosed Critical Area Buffer assistance guide provides information on plan requirements.
4. The Critical Area easements on the southern and northern parts of the property shall be recorded in Baltimore County Land Records via the right-of-way/easement plat process along with a declaration of protective covenants that restrict use and disturbance of the areas. This recordation must be completed prior to any permit approval. The required Critical Area Easements are approximately shown on the plan with this variance request, titled, "Plan to Accompany Critical Area Variance Application". Bearings and distances on Easement boundaries are required on the final Critical Area Management Plan.
5. "Surveyed limits of the Critical Area easements shall be clearly marked in the field at predetermined intervals with permanent below grade markers to facilitate identification of easement limits by both homeowners and County staff. Critical Area Easement "Do Not Disturb" signs shall be installed as "witness" posts near each rebar location. Additionally, the locations of the rebar, and the outer easement limits, shall be submitted digitally to EPS in a format that could be incorporated into a GIS layer for future County use. The locations of these signs and markers shall be shown on the plan for this project. This requirement must be completed prior to permit approval". This note must be added to all plans for this project. Sign specifications are enclosed.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until the 30 day appeal period has elapsed pursuant to COMAR 27.01.12.07 C.

The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

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If you have questions regarding this project, please contact Thomas Panzarella at 410-887-3980.

Sincerely,

David. V. Lykens
Director

DVL: tcp

Enclosures: Critical Area Buffer Assistance Guide, Sign Specifications

c: Ms. Susan Makhoul, Critical Area Commission

I/We have read and agree to implement the above requirements to bring my/our property, located at 2897 Breezy Point Court, into compliance with Baltimore County Code Article 33. Environmental Protection And Sustainability, Title 2 Chesapeake Bay Critical Areas Protection.

Property Owner(s) Signature(s)

Date

Property Owner(s) Printed Name(s)